Filed 6/7/10 Vassilakis v. Dixon-Hagen CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

MARTA DIXON VASSILAKIS,

Plaintiff and Respondent,

v.

TERRI DIXON-HAGEN,

Defendant and Appellant.

F058520

(Super. Ct. No. VFL233435)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Tulare County. Jennifer Shirk, Judge.

Terri Dixon-Hagen, in pro. per., for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Terri Dixon-Hagen appeals from a domestic violence restraining order entered against her and in favor of her sister, Marta Dixon Vassilakis. We affirm.

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[*] Before Cornell, Acting P.J., Dawson, J. and Hill, J.

FACTUAL AND PROCEDURAL BACKGROUND

Respondent, Marta Dixon Vassilakis (Vassilakis), sought a domestic violence restraining order against her older sister, Terri Dixon-Hagen (Dixon-Hagen), to prevent Dixon-Hagen from harassing or contacting both Vassilakis and their brother, Loy Thomas Dixon (Dixon). The application for that order alleged Vassilakis and Dixon lived in their mother's house and Dixon-Hagen lived in a back unit on the property. Their mother, Sonia Dixon (Sonia)[1], began proceedings to evict Dixon-Hagen from the property, but passed away before the eviction was complete. After Sonia's death, Vassilakis continued the eviction proceedings; Dixon-Hagen appealed the judgment against her in the eviction action and was granted a stay of enforcement of the judgment of possession. Vassilakis' application for a restraining order alleged Dixon-Hagen confronted Dixon at home and in public places, screaming and yelling at him; the police were called to those public places a few times. Dixon-Hagen would park behind other vehicles in the driveway, then go to her unit. Vassilakis and Dixon would have to go and ask her to move her car, resulting in a confrontation "with crazy talking in tongues at us, declaring she will take 'control' of us, 'bind' us, etcetera." When Vassilakis went to Los Angeles for five days, leaving Dixon at home, "the situation escalated … with police being called daily if not twice." Dixon-Hagen also stood outside the sliding glass doors looking into the house and videotaping a family gathering, and stood at the front of the house videotaping Dixon through his window.

Dixon-Hagen responded to the application by filing a memorandum of points and authorities in support of a motion to quash the request for a restraining order and a supporting declaration. The declaration asserted that Dixon had Sonia file the eviction action against Dixon-Hagen in retaliation for her efforts to confront Sonia about Dixon's

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1 To avoid confusion, Sonia Dixon will be referenced by her first name; no disrespect is intended or implied.

drug and alcohol addiction. Dixon-Hagen asserted she was preparing to file a petition for conservatorship of Dixon, so Dixon would not harm himself or someone else. She declared Sonia "waged a campaign against her and badmouthed her, and the family harassed her." Dixon-Hagen's memorandum of points and authorities asserted Vassilakis did not timely file the proof of service showing the application and order to show cause were served on her.

At the hearing of the application, Vassilakis submitted a document in which she had set out her thoughts in response to Dixon-Hagen's declaration. The court admitted the document as an exhibit. The court questioned the parties, learning that the house belonged to Sonia, her estate had not yet been probated, although Vassilakis had consulted an attorney for that purpose, and there were problems in that the will and a trust Sonia created might not be valid. The court expressed doubts about its authority to order Dixon-Hagen to leave a house Vassilakis did not own. After hearing the statements of both parties and the testimony of one witness, the parties' niece, Kathleen Rocha, the court denied Dixon-Hagen's motion to quash and entered a restraining order, ordering Dixon-Hagen to stay at least 10 yards[2] away from Vassilakis and not contact her or disturb her peace; the restraints were to remain in effect for six months, until January 7, 2010, with an opportunity at that time for Vassilakis to request they be extended.

DISCUSSION

I. Mootness

"As a general rule, when an event has occurred pending appeal from a lower court judgment which '"renders it impossible"' for the appellate court to grant an appellant '"any effectual relief whatever,"' the appeal will be dismissed as moot. [Citation.]" (*Schraer v. Berkeley Property Owners' Assn*. (1989) 207 Cal.App.3d 719, 728.) The

[2] The court orally ordered Dixon-Hagen to stay at least 10 feet away from Vassilakis; the written order required her to stay at least 10 yards away from Vassilakis' home, job, and vehicle.

written order entered by the court separated the restraining orders into two categories: personal conduct orders (not to harass or contact Vassilakis) and stay-away orders (to stay at least 10 yards away from Vassilakis' home, job and vehicle). The order expressly provided that the personal conduct restraints would expire on January 7, 2010. It did not expressly state when the stay-away order would expire. For this reason and because the court left open the possibility of extending the duration of the order, although the January 7, 2010, date has passed, it is not clear that Dixon-Hagen's appeal is moot. Accordingly, we address the merits of her appeal.

II. Hearsay Evidence

On appeal, the judgment is presumed correct and the burden is on the appellant to overcome that presumption and show reversible error. (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610.) The appellant must present an adequate argument in support of her allegations of error, including citations to supporting authorities and to relevant portions of the record. (*Yield Dynamics, Inc. v. TEA Systems Corp*. (2007) 154 Cal.App.4th 547, 557.) In the absence of argument and authority, the court may treat the point as waived. (*McComber v. Wells* (1999) 72 Cal.App.4th 512, 522.) Although Dixon-Hagen is representing herself, she is not exempt from these rules. (*Id*. at p. 523.)

Dixon-Hagen contends the application for a restraining order was improperly granted on the basis of hearsay evidence. It is not clear from her brief what testimony or evidence she contends was hearsay that should not have been admitted. If her claim is based on the testimony of Rocha, which Rocha admitted was not based on her own personal knowledge, Dixon-Hagen failed to raise that issue in the trial court. "'An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the lower court by some appropriate method.'" (*Doers v. Golden Gate Bridge etc. Dist*. (1979) 23 Cal.3d 180, 184-185, fn. 1.) One reason for this

is "'that it is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial.'" (*Ibid*, italics omitted.) Any hearsay objection was waived by Dixon-Hagen's failure to raise it in the trial court. (Evid. Code, § 353; *Fry v. Pro-Line Boats, Inc*. (2008) 163 Cal.App.4th 970, 974.)

Additionally, Dixon-Hagen has not demonstrated that any prejudice resulted from admission of the evidence. "'The burden is on the appellant in every case to show that the claimed error is prejudicial; i.e., that it has resulted in a miscarriage of justice.' [Citation.]" (*In re Marriage of McLaughlin* (2000) 82 Cal.App.4th 327, 337.) The court has a duty to examine the record for prejudice only when the appellant has "'fulfilled his duty to tender a proper prejudice argument.'" (*Ibid*.)

Because no objection was raised, the trial court did not explicitly determine whether the testimony was hearsay and therefore inadmissible. The trial court asked Rocha more than once whether she had "firsthand information" about Dixon-Hagen's conduct toward Vassilakis. Rocha admitted she did not. The trial court's questioning suggests the court was aware of the hearsay nature of the evidence and the limitations on its admissibility and reliability. Further, even without consideration of Rocha's testimony, there was enough admissible evidence to satisfy the substantial evidence standard. No prejudice was shown.

III. Proof of Service of Petition

Dixon-Hagen contends the trial court improperly denied her motion to quash Vassilakis' application. Her motion to quash did not challenge service on her of the application and supporting papers; in fact, it admitted she was served with the application and the order to show cause "by unknown person" ten days before the hearing. She challenges instead the failure to serve her with a proof of service along with the order to show cause and the petition, and the failure to file the proof of service two days before the hearing.

Family Code section 243[3] applies when a restraining order is issued pursuant to the Domestic Violence Prevention Act. (§ 240.) Vassilakis' application for a restraining order was made pursuant to that Act. Section 243 provides that, when a restraining order "has been issued without notice pending the hearing, the applicant must have served on the respondent, at least five days before the hearing, a copy of each of the following: [¶] (1) The order to show cause. [¶] (2) The application and the affidavits and points and authorities in support of the application. [¶] (3) Any other supporting papers filed with the court." (*Id.*, subd. (b).) Vassilakis' application was filed on July 6, 2009, and the combined temporary restraining order and order to show cause was issued on July 7, 2009. There is no indication in the record that notice was given to Dixon-Hagen prior to issuance of the temporary restraining order. Consequently, section 243, subdivision (b), sets out the documents to be served on Dixon-Hagen prior to the hearing. Dixon-Hagen conceded the application and order to show cause were served on her ten days before the hearing. Section 243 did not require that a proof of service be served with them. This makes sense, because the proof of service could not be completed, signed, and copied until after service was made.

Vassilakis' failure to timely file a proof of service with the court was not grounds for denial of the application for a restraining order. When the party against whom a restraining order is sought has not appeared in the action, the order to show cause must be served on that party in the same manner as a summons and complaint. (Cal. Rules of Court, rule 3.1150(a).) Summons and complaint may be served by personal delivery of a copy to the person to be served. (Code Civ. Proc., § 415.10.) Proof of personal service may be made by affidavit of the person making the service or by written admission of the party. (Code Civ. Proc., § 417.10, subd. (a), (d).) Dixon-Hagen admitted in writing in her motion to quash that she was served with the order to show cause and the application

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3 All further statutory references are to the Family Code, unless otherwise indicated.

for a restraining order. Consequently, the court did not err in denying the motion to quash.

IV. Judge's Bias and Failure to File Oath of Office

Dixon-Hagen appears to argue the trial court judge was biased against her because the judge permitted improper service on her. As discussed previously, Dixon-Hagen admitted she was served with the necessary papers prior to the hearing. There is no support for her claim of bias.

Dixon-Hagen contends the trial court judge was required by Government Code section 1363 to file her oath of office with the county clerk and the Secretary of State. She contends the judge did not do so, and therefore the restraining order is void. She cites nothing in the record, and we have found nothing, to support her assertion that the judge failed to file her oath of office. Consequently, she has not overcome the presumption that the judgment is correct.

DISPOSITION

The judgment is affirmed.